

A SEASONABLE
ADDRESS,

From several Persons interested in the
proposed ALTERATION of the LAW
regulating

ENTAILS;

To the NOBLEMEN and GENTLEMEN of

NORTH BRITAIN:

And to the MEMBERS of the BRITISH PARLIAMENT
in general.

Frangimur si Collidimur.

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Newport R. I.

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[Printed on the reverse side]

A SEASONABLE
ADDRESS, &c.

Frangimur si collidimur.

WE have taken for our motto, what the Hollanders used in their Distresses; because, though the professed intention of the patrons of this measure now under consideration, is not to destroy Entails, but to amend the law concerning them; we might, by imprudent opposition and precipitate censure, however upright our intention, totally counterwork and defeat the purpose of our indiscreet labours.

Unwilling to adventure on a subject, which many others may be better qualified to canvas, though few have thought more upon it, or have used more impartial means for information; we waited, not only for the resolutions of the counties, but for some plans, improved from what hath been spoken and already published on this interesting subject; hoping the general importance of it would have procured some, worthy of attention. But none such appearing, and the counties varying so much in their opinions, even those few who adopted any plan; it is hoped

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that

that under these circumstances, it will not be thought presumptuous in any concerned; or unseasonable, during the meeting of Parliament; to offer, with just deference to superior abilities, a few observations to the consideration of the public. In the present state of the affair, it is possible a motion for the proposed Bill may be made this session; and in prudence as well as medicine, preventives are more eligible than correctives.—We will not be dogmatical in our own opinions, nor censorious of the opinions of others.

The parties concerned may reasonably be supposed, to be at least capable of forming a rational judgment of prudential propositions, when candidly and clearly laid before them; and after the consideration which the frequent public requisitions must have produced. Would it not be more suitable to the importance of the object, that it received as yet a serious review by all the counties? Several persons, in many counties, not contemptible in fortune, nor in other respects, were consenting to this measure; others were for waiting for further information. No one imagined that such suggestions could confine the legislature; but it is usual, in all applications to Parliament, to offer to their consideration what appears to the parties interested to be most expedient. Should a law happen to pass, disagreeable or injurious to the majority, the candour and benignity of the Legislature would, upon complaint, redress such grievance! But it is better to prevent

prevent the necessity of emendation, in which the representatives from this country would have little prospect of relief. Though unanimity of sentiment cannot, in the nature of men and things, be expected on such intricate arduous subjects, a general county review, or a congress, by delegates from each, would probably produce the true sense of the majority, and save all the bad consequences of precipitation.

That the present law requires amendment in respect to wives, husbands, children, creditors, leases, improvement of land by all reasonable methods, the limitations of land in locking it up from commerce, and in respect to forfeitures by riot and rebellion; are points that few will dispute: but in the present age of dissipation, where sensual gratifications and luxurious pleasures are the chief objects of attention; so few of the present generation, or the future, have a chance to escape their attractions; that some reasonable restraints are necessary. The learned Burlamaqui and many others observe, that our perverse natures require restraints as well as rules.—*Lex est sanctio justa jubens honesta, prohibens contraria*; vice is the occasion and chief object of law; all follies, affecting the public or individuals, become vicious. Let us not then, in place of the needful restraints, by granting powers of dissipation, nurse and feed the present rapacious appetite for follies. Our ancestors long before the Act 85, judged it necessary to impose restraints by Entails, which were allowed to be wise and prudent in their

days. But as we ought to improve beyond them in many things, and accommodate our measures to the alteration of times and circumstances, it is no proof of wisdom either to be too tenacious of old principles, or too hasty in the adoption of new.—True wisdom is the growth of experience and consideration!

In framing or amending any law that is to regulate such variety of interests, and future contingencies; the utmost caution and deliberation are necessary; especially when not alterable without danger. The wisest Legislatures are neither so penetrating nor prescient, but that frequent errors and mistakes appear in their councils. We should therefore be especially cautious in introducing systems, and adopting from other countries what may be good and peculiar to them alone.

The great and good Montesquieu says, “ Good policy will suit laws to prevailing propensities, and to have probability of effect, usually are, at least ought to be, adapted to the genius, tempers, habits, and circumstances of the people whom they are to regulate; therefore the laws of different countries justly vary in sundry particulars; for the special proper establishments in one country may be hurtful in another.” The usual jurisprudence of makers or executors of law in one country, rarely extends beyond the limits of that country. It is therefore dangerous for them to deal with trust deeds, and such matters, which being peculiar and local, they

they may not be sufficiently acquainted with. The various public and private interests should be considered in the complex, especially by every aid in our power, to maintain our present happy constitution. We know that with us all private interests are compatible with that of the public. Dr. Warburton justly enjoins peculiar attention in all public regulations, to their influence on the community, as well as on the special persons or classes.

The variety of evils to be cured and prevented, require much deliberation, and all possible aids: and though no perfection is to be expected in any human composition, a proper attention to, and due consideration of, various sentiments, afford the most probable chance for fewest errors.—It is in the nature of even the most artful human institutions to be defective and miss of their aim. Even the Jesuits, with all the cunning of their famous Aquaviva, all their generals, and all their councils, have now found they have erred.—No wonder then, that the plans as yet published for the intended reforms of Entails, though from very respectable heads, have not proved satisfactory to all concerned. Indeed rarely doth any plan of importance come perfect from the first composers. Various sentiments and objections are needful to bring it to maturity. We have been eighty years in finding the faults proposed to be cured; and some county meetings have been so wise and quick-sighted to cure them in fewer minutes. There is surely less hurt in some delay,

delay, than in the mistakes to which precipitate measures are liable.

It is agreed by all, that coercive statutes are to be interpreted strictly, and should therefore be very explicit and clear. This is an additional Reason against precipitation, and hastily adopting, in an affair so important in its consequences, the plans of individuals. Had the learned gentlemen, then allowed to be eminent in our law, who prepared and obtained an Act to amend our Election Laws, consulted with proper persons, concerning matters in which the whole country ought to have been consulted; we should not have had cause to complain, that this important point now in deliberation, which is *materially* to dispose of all the land in North Britain, in respect to future generations, as well as the present; *may be determined*, by Persons not only chosen to Parliament by such as have not the real possessions or profits of one inch of land; but themselves possibly may, *as the law thus amended stands*, have as little in real or personal estate.——Thus, by maintaining absurd, antiquated principles, and obsolete usages; when, thanks to good Providence and a most worthy great man, of whom we are now unhappily deprived by death, we are relieved from their slavish, noxious concomitants. Have we not then, recent example, as well as reason, to induce to caution? And still farther, where the law is to be local, and limited to one class of people, reasonably supposed capable to judge of the needful amendments of the subsisting law, when laid before them;

them; such law should have for its sanction, the explicit approbation of the majority concerned.— If it is not judged proper to attain this by a review of the counties, or by congress of delegates from each, as before mentioned; it may be accomplished by printing the bill, and appointing a long adjournment for its second reading upon the report of the committee; when we shall see, the wise and prudent effects of leaving it entirely to the wisdom of the legislature.

That the preservation of families by Entails; with so much regard to primogeniture, justified by antient and general practice, as to preserve for some time at least respectable property, and enable the possessors to answer the good purposes of such regard, is favourable to industry and commerce, and for justice to jointures, children and creditors, as well as for the public security and welfare; in place of being injurious to any such, or to any other just concern; is illustrated in many instances by the late ingenious author of the Considerations upon the Policy of Entails. He apprehends it absurd, to make any distinction betwixt male and female successors. The female may, at least equally, maintain the purity of the blood; the same as to name and arms, and may at many periods, especially if the estate is allowed to go to the second son or daughter in special circumstances, bring perhaps more valuable connections to the family. But where honours go with estates not
suitable

suitable to support the dignity, they should not be parted : because it may be injurious to all connections, and dangerous to the Constitution, to separate the estate from them : for hurtful dependance must in such case probably insue.——Now that we are happily released from personal service, we cannot see the sense of a salic law or male heirs——our great imperial crown descends equally to females, some of whom have been very eminent ; why then may not a small estate go in like channel ? Nor do we aim at perpetuities, knowing it to be a ridiculous, as well as immoral folly, and inconsistent with the instability of all earthly concerns. Let Estates pass, and alienations proceed gradually, from rational sources ; at least from such intending to do good ; but not from evident folly and vice. Law should not encourage, but restrain and punish vice. A spendthrift of his own fortune, besides private injuries by it, would be at least a suspicious manager for the public. What we aim at is, that all the interest truly and justly concerned in families, pretended to be saved by the proposed amendments, may not be destroyed nor even hurt by them : by debauching perhaps a hopeful youth, by the dangerous temptations of credit, and powers to dissipate at once, what might have made him and his posterity happy, useful and respectable : that some families of what a late ingenious writer terms *genteel poor*, may be prevented from being cast in greater numbers upon their country ; attending or gaping for places or pensions, so shamefully

thamefully and ruinously multiplied already: or from being forced to relinquish the country, where people are as yet, at least by double their present number, too few. Those once enflamed with riots, will seek for fuel wherever they can find it, whatever the consequence may be to themselves, their friends; or their Country.

Entails are countenanced by the highest possible respectable, nay authoritative instance, viz. the happy Entail of our Crown, which is also under salutary regulations and restrictions; and from which we have profited greatly both as individuals and as a community. Nor are we without evidence of undeniable advantages from private Entails: many worthy useful families now exist, that, like some who have formerly shone in history, but have now no representation, nor any that can vouch connection with them; might have been extinct without them. The honour of an antient family will surely be allowed to have some effect, to prompt to good, and restrain from bad. Can religion, liberty, property, commerce and every thing valuable, be most safe in the hands of profligates and needy dependants? why then increase their number, which credit will infallibly do? It is no strained conjecture, That all these valuable possessions may be by such means cast into their hands——And why defeat the possibility of preserving some old independant families, or by any means weaken the chance of having a few such?

If credit, and too easy and quick sale of land are allowed, besides the many other temptations and objects for expence, the avidity for being in Parliament, and the shameful, dangerous expence at least frequently attending it, may soon bring too many into the dismal situation mentioned in the preceeding paragraph. It is to be feared the too frequent use made of such honourable seat, is not so constantly in studying and promoting reforms and improvements, as the means and rules of obtaining and retaining the favour of men in power, which may at some unhappy period prove fatal! Though there is no cause to dread that all will prove such, the possibility of a majority is alarming. In dangers so important, why run any risk? History informs us, that private prodigality, when become general, seldom fails to introduce national poverty, and often ruin. It is certain fact, that the distress of individuals, from previous dissipations, was the chief motive with many for entering into all our rebellions since the revolution; and without whom, the enthusiasts for arbitrary power could not have effected any disturbance. The friends of arbitrary power will never be friends to Entails; Cromwell's inclination to suppress them in England, *even such as they are*, is very remarkable.—It is justly observed by the ingenious author of the *Consideration, The Destruction of antient families* has always been the aim of all Tyrants. The records of history will shew, that in proportion to prevailing despotism, antient families are few, and even arts and commerce will be found in proportion, except in very few instances, where a false pride, as

in modern Spain, obstructs it. A prudent government, not aiming at despotism, will equally preserve the high spirit of one set of men, as encourage the industrious spirits and useful habits of others. Both are essential to its security and prosperity. The destruction or weakening of Entails would destroy or weaken this combined force; and make, as hath been said, many individuals poorer, and the community very far from being richer. The great number of estates in almost every county now upon sale, is an undeniable proof of this. Birth with indigence is very dangerous to the constitution as well as individuals. This has been said before, but it cannot be too strongly impressed. Beside the servile attendance and dependance already mentioned, our own times hath furnished, as hath also been noticed, fatal effects of their desperation. Let the fall of families be but gradual, and they and the public will not be so sensibly affected by the alteration. If the old fall gradually, some time is afforded for the establishment of others to succeed them, and who may also succeed to their political importance in the nation.

We lately said, the many estates at present in the market is a clear proof of the bad effects of much credit, and is evidently equally unfavourable to commerce. The fondness of our countrymen for land, and perhaps the title and puny peculiar privileges of a laird, are greater obstructions to national, useful commerce, than their poverty. This passion, too general and prevalent, whether from vanity, info-

lence or timidity against hazard or further adventure, makes many relinquish trade, when but beginning to be qualified for it. Cheapness of goods at a foreign market, is the main security of an extended national commerce. A small profit *per Cent.* upon a large capital, may, and probably will, content the adventurer; though one of a small capital cannot subsist upon it. Sir John Barnard, in the zenith of his allowed abilities in the knowledge of commerce, was for reducing the legal interest to four *per Cent.* because one *per Cent.* more *per Annum* upon a large capital would be a sufficient reward for time and trouble of a merchant, and would tempt and enable such to trade and sell their commodities cheap, much to the national benefit. Why should we then anxiously struggle for a law to feed this weakness of our countrymen, and force temptations upon them to withdraw from trade by greater choice of Estates.

This, at present hurtful appetite in our countrymen, may, by strengthening in place of weakening Entails, be made conducive to their continuance in an extension of commerce. There is a strong bent in many to continue their name, and the produce of their labours, with such successors as are agreeable to them; to accomplish this object very engaging to many, some will forego other personal gratifications, others continue or go into the course in which they have the best chance to attain it. We apprehend such, from the same motive, will also be very diligent in all manner of improvements, and may probably secure them to be friends

to our liberty and constitution, so essential to the preservation and endurance of what they aim at; and strongly excite to planting, fishing, mining, and cultivation of waste lands, according to situations and circumstances; all these requiring time and perseverance: being thereby satisfied some such heirs may enjoy them, notwithstanding contagious dissipations. But without such security for its continuance for some time with the heirs they aim at, which cannot be, if dilapidations are allowed; they will indulge themselves for their own lives, abstract from trade, and neglect improvements, reposing in what they think a competency. For having nothing to stimulate them to perseverance in labour, they will justify themselves by thinking they have laboured long enough for perhaps a worthless spendthrift, who by the encouragements of the law may dissipate all in a short time.

We cannot therefore think it prudent in a commercial country, which we wish to be, to tempt people in trade by daily choice of estates, and these rendered cheap by their number in market, to withdraw from it, when best in condition to pursue and succeed in it. We must again notice as important, that he who can extend it most, and with most profit to himself and the community; whatever the state of interest be, by a farther continuance in trade renders him farther useful to both. The avidity of our countrymen for land will be encouraged by the cheapness of estates, which will infallibly be the case,

case, if our landed men are not under strict restraints. This omission adds to the temptation, and prevents improvements as above. However inferior in fortune, or in any respect, to the English, our passions for pleasures and gratifications of almost all kinds, are as strong; which will be enjoyed to our ruin, in proportion to the extension of credit. Remember Montesquieu's precept. And if our money be spent abroad, or in foreign commodities, the nation, as well as individuals, is hurt; nay, the nation loses forever the annual circulation of the rents of such estates: the purchaser does not recompense it; for without the purchase, his yearly income would equally circulate, and perhaps, if kept from the purchase by exercise of trade and industry, add to his own and the national stock. Exportation from ourselves or others to strangers, is the only national gain in commerce; as dissipation at home is the greatest load and check upon it. In England they do not complain of the Entails and trust Estates allowed there; these do not exclude the merchants from land when proper, nor do they grudge being deprived of the aids of credit from it. The small proportion of property yet entailed in Scotland, and the daily devices of lawyers to defeat many of them, excludes any just apprehensions that they will extend too far. If there was any just cause for this, the gradual circulation of Land for rational good purposes, and in proportion to improvements, intended to be suggested; will effectually prevent it.

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Though we wish to restrain strictly from alienations to feed and promote folly and vice, so hurtful both to individuals and the public; and for that end, not to allow it, even for the entailor's debts, nor for provisions for children, if either or both do not exceed five years of the neat rents of the estate, after jointures and interests of debts, after the whole personal estate is disposed of, or fairly valued, and no more than to satisfy the surplus; and then only by fair auction before the Court of Session; all for reasons which shall be offered, and seem to us satisfactory; we nevertheless equally incline for liberty to alienate under restrictions, for rational and useful purposes. Let excambians take place by the judgment of the Court of Session, if for the evident benefit of the entailed estate, or improvements for the public benefit, provided they don't exceed

part of the estate, nor be any part of the policy or demesne of the house, nor include more than half the planting, though at a distance from the house, nor incommode the rest of the estate in fuel or pastures. The same limitations as to feus for settlements, or manufactures, provided any one person may not, by purchase or succession, possess more than two acres; but upon succession be obliged to dispose of it to others. Also to encourage and prompt to improvements, let liberty be allowed to sell a detached part of it before the Court of Session, subject to the above general limitations, and not to exceed half the improved rent; that the heir of the entail may have no cause to complain of being restrained from such improvement, and to profit

profit nothing in lieu thereof. And for ascertaining the improved rent, every entail should contain the rent-roll and *debita fundi*, or refer to a signed schedule, to be recorded likewise in some proper manner. For the same good purpose, let the owner have liberty to sell, or give, to wife, husband or children, to the amount of half *his own planting*, if not near the house, and not truly a part of the policy; and be able to allow twenty years after his death for cutting and taking it away; the sheriff or substitute to divide it, but the heir not to be obstructed to use reasonably what belongs to him, nor the enjoyment of the pasture amongst the whole.

Certain circumstances, favourable to the family, in interest or connections equally valuable, may reasonably require a power to provide wife or husband, to the half of the neat rent, after all other jointures and interest of debts; and as the estate may be deficient for a competency, in such event we have suggested as above the power of giving half the planting, and no material objections appear to allowing the mansion-house, until the heir attain twenty-one years or marriage. The excitement of interest is often the most efficacious, therefore interesting husband or wife in the improving the estate may prove good policy for the heir as well as the public.

We may have often gone into one extreme, to starve or pinch the younger children, in favour of
primogeniture

primogeniture; but to remedy the evil of this extreme we should not fall into the opposite one, nor allow our prejudice to blind us, to prevent us seeing some material benefits from a proper root or stem, for the nourishment and vigour of all lateral branches. The wise man refers us to insects for instruction; and many writers have reasoned from the natural to the politic body: is it absurd to argue in this case from vegetation? No branch can thrive if the root is sickly or weak. In a family it must be allowed, the eldest son, by his respectable state, hath often introduced his younger brother, and his sisters to advantageous situations in life, to which they would not probably have otherwise arrived; and which the largest provisions the family could possibly have afforded, would not have acquired: It is also certain, that in many instances, after the younger children have been reduced, by misfortunes or folly, to great distress; they have been re-established, and have attained prosperity, by the bounty or influence of the elder branch. In commerce, or any department of science or art, those of large original provisions will not be found in the general the most successful, which is an additional argument for Entails. Besides, the authority of the proverb, necessity is often a spur to both ingenuity, application, and oeconomy in all affairs.—Had Colbrook been provided with the 4th of the small estate in that family, he had never attained to the honours and reputation with which he at length lived and died.—But though large provisions may not be necessary for younger children, or the public benefit; and

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though the stem should not be too much weakened by favourable intentions for them, as it ought and may support them; there is yet a prudent medium, according to which there should be power to provide, encourage, and reward, suited to circumstances of the estate, and the desert of the children. We detest as much as any do, all slavish dependence, which therefore should be discreetly provided against; but too much independence amongst near connections has not always the most salutary effects: by the abuse of it, of which perverse nature, especially in a corrupt age, is very capable; even more than a dissolution of the bonds of natural affection and reciprocal kindness has often resulted. To aim at a rational medium, suppose from 2 to 6 years of the free neat rent of the estate, besides personal estate, in proportion to the number of children, were submitted to the disposal of the parent. If inclination in the parent prompts him to extend it; let him improve his land, and plant trees; the first will be enlarged in the above provision by years rents, and the second we have before suggested as a fund for such purpose. The famous Evelyn and others, mention it as the practice of some parts of Europe, to plant a number of trees for the fortune of each child, and the person who neglects it, which few do, is in much disesteem with the whole inhabitants. This provision may much promote so useful an improvement, which the power of imposing a heavy load upon the estate might probably prevent. It may merit consideration, if annuities might not, in some cases, be allowed in lieu of principals, at the rate of
double

double interest of what was intended, and could have been given in principal. It is doubted if power of redemption to either party would be salutary; as it might sometimes distress, and sometimes occasion disunion; none of which might otherwise happen; if the parties are in friendship, and it may prove for the benefit of either, or both, it can voluntarily be done. Easy means may be devised for effectual speedy payment, in which all possible guards should be provided, to prevent the exercise and bad consequences of humour and disgusts on either side. If more annuities, in some shape, in place of debts where principals are to be repaid, were used by the public, it might be of service. They might enable us at least, at some period, to release commerce from grievous taxes which now much hurt it; and put us in a respectable situation in many views. A state internally strong is not so liable to be insulted or attacked, as when in a weak condition; which our factious partizans are too forward to explore, and aggravate.

There hath not occurred, nor scarcely can occur, a subject of more importance to the country and individuals, than the regulation of Entails. Can there then be too much caution, and care in its settlement, as it cannot, like other things, ripen by frequent amendments? Leases are a very material branch of it, for both public and private concerns. The improvement of the country depends much upon them; provided there be limitation, as to quantum in any one, the want of which is now

much and justly complained of; and also of stone-pits, lime, coal, minerals, springs. Needful roads and watercourses, &c. are much wanted; the neglect of which might obstruct future eventual improvements. All which requires to be cautiously and clearly expressed, to prevent disputes and litigations. No person of ingenuity or substance will hazard much either upon a precarious tenure, even where natural manures abound for improvement of waste, or poor lands. A long time is necessary to accomplish any material improvement. Nor can manufactures, or the working of minerals, of which we have many appearances, be established, without settlements for a reasonable time: power therefore should be allowed to grant reasonable leases suited to circumstances, but not under the entailed rent, unless upon unexpected emergencies or events which possibly may happen; and in such case, to prevent collusion, they should be executed before the sheriff, with power of revival by the supreme court, in case of partiality or errors. This needful limitation to the entailed rent farther renders it necessary, to prevent future squabbles, and uncertainty about ancient rents, that the rent roll be ascertained in the Entail as above. Nor should the family demesne be leased, at least not longer than the heir attain to age or marriage, and that carefully without impeachment of waste to house, gardens, planting, or policy. There should also be guards against impositions upon weak persons, prejudices or resentments against successors, which may sometimes occur. The heir being thus secured against the
injustice

injustice of his predecessor, and being sharer in all improvements of every sort, cannot justly complain of the powers granted to, or exerted by, his predecessor, even though he should think they ought to have been ordered otherwise. His own and the publick benefit is thereby advanced in point of time. And in respect to having the apparent power of a proprietor, or any gratification that might arise from such power, the heir hath no better claim to it than his predecessors, very often less; when less disposed or active for public or private good, according to his opportunity. A reasonable endurance ought to be allowed in proportion to circumstances of time, persons and things, with limitations not to incommode materially the family or rent of the estate in any respect. Suppose any number under 20 years, in ordinary cases, and to be extended in proportion as rent is encreased, or improvements of any kind are provided for. If the rent is to be increased gradually, one half, or double, or more, power may be given to enlarge the time to 40 or 60 years; and in case of valuable manufactures, or minerals, for which large expensive buildings may be necessary, at the cost of the adventurers, and for which large plantations where there are waste lands should be encouraged, whether performed by heritor or tenant, as they were in many instances become necessary, even only for fuel; the power might reasonably extend to 100 years. Leases for lives, by which England was originally and chiefly improved, should not be discouraged

discouraged in this unimproved country, where, besides bad husbandry, and too much sloth and defect of spirit as well as substance in the generality of our tenants; the cultivated lands are but spots in proportion to the extensive wastes.—But even these liferents should be qualified with the above cautionary limitations: and it is worthy of consideration how far any such leases should be allowed to widows, heirs or assigns. In these as well as in many other points, there is however much to be said on both sides.

As to creditors, for whose interests there hath been a great cry and attention, by almost all who have appeared in public upon this subject, we doubt not from the laudable principle of justice, all reasonable provision and care will be taken of them. But as our chief aim, in all our suggestions, has been to restrain vice and folly in individuals, as being evidently hurtful to the public, and often very distressful to many very deserving innocents; and as we have already suggested limitations to the paying, even the debts of the Entail, which without manifest violation of law and justice, there could not be any attempt or intention to disappoint: we cannot consistently incline that any provision should be allowed for any creditors of the heir of Entail, except for evident beneficial purposes for the family and publick. If we could see any degree of real injustice or hardship in this, we should have been as forward as any to approve all possible measures for their security and payment; and shall always,

ways, without prejudice, be open to information; and upon conviction will, with joy, recant our present opinions. Besides the present easy means to know who are subject to Entails; further means may easily be devised, to render ignorance of it, even to the meanest and most obscure, almost impossible. Suppose the officers of the Record of Entails should, under proper penalties, be obliged to print alphabetical lists of all Entails, both with the name of the possessor and name of the estate, that any person enquired after may be the more easily discovered; and such lists to contain the year when made, and recorded, with the volume and page of the Record, that if further satisfaction is wanted, it may be readily found. And as such inspection cannot give much trouble to the office-keeper, small allowance to him is sufficient. Such list to be delivered to a proper servant about the Court of Session, and to the sheriff and town-clerk of Edinburgh, and those of the county or counties where the estates lie. All these, under proper penalties, to keep the lists always exposed in proper public places. The officer of the record to add to them each six months by writ, the new that have occurred; and each years, new lists printed and distributed as above, striking or leaving out, similar to many other rolls, what Entails are dissolved by accidents or final judgments. After some such means of information, is there any probability of injury by ignorance? If not ignorant, *volenti non injuria*. But if more security or relief is desired

desired for such creditors, especially as strangers to both country and law may possibly be involved ; such should be preferably relieved to those who had access to the information above recommended. Why then not relieve them by some easy access to half the rents, and all the personal estate, and even the person of the transgressor, (for such we cannot help esteeming him) rather than injure innocent parties, and perhaps the public, by the alienation of the lands, in the preservation of which all are interested, and which otherwise must soon destroy all families. The other half of the rents, with the mansion-house and gardens, which should not be valued in the division, may be exempted, and should be settled alimentary upon the wife and children, to save them from distress, and render him at least dependent upon them, that the madman may, as much as possible, in such lamentable case, suffer by himself only. Personal folly should have personal punishment. If more should be done for such creditors, let them have access to the half of his own improvements and planting, which may possibly stimulate some brutes to be somewhat useful. Is it not beneath the dignity, wisdom, and justice of law to allow, much less to countenance and authorize so many innocents to be destroyed by the vices of one ? This will unavoidably be often the case, if in this vicious age credit is provided for them ; whatever may be the benevolent design of the allowance. But, whatever may be judged proper as to fair creditors, though Entails cannot peculiarly hurt

hurt them, there being clearly many more who suffer by those under no restraints than by those subject to Entails ; as the creditors of those without them have no clear means or rule by which to limit their creditors. This evidently shews there is less hazard, and probably less loss, in dealing with possessors of entailed estates, and proves an additional strong reason, even in respect of creditors, for Entails. But what can be said in favour of game debts, or money borrowed to pay them, if the lender knows the intended application of it ? Should not, on this occasion, and upon every proper one, explicit detestation and marks of ignominy be expressed by the law, which ought also to be by all in authority, and who should show good example, who should lead in what is good, as many such at present do in what is exceptionable and foolish, against a practice become so general, and which is so fatal to almost every thing worthy of praise. Should not every possible discouragement be given to it, and all possible guards provided against the tricks and devices of sharpers and their counsellors to evade the law, and delude the simple and unwary ? It is a just reproach, and justly enlarged in proportion to the dignity or abilities of the transgressors, that they cannot amuse themselves more innocently. Can such a person justly claim to be a patriot, or indeed hope to be honoured or trusted with any publick employ ? And moreover, as every one engaged wishes to win, it is evident proof of a mean covetous disposition, void of all generosity and humanity, having no consideration of the age or circumstances, nor feel-

ings for the distress of the sufferers. Are the great ones alone privileged to do evil? Surely there is no honour nor true dignity in such privilege. Many respectable states have issued severe prohibitions and punishments against this destructive practice: shall this kingdom, enjoying unequalled advantages, in many important particulars, and which ought to lead in every thing good and glorious, be the last in such important reform? And is it not the more shameful that laws, and the execution of them, are severe against low offenders, and no discouragements to those in high life? When such imprudent, and indeed unjust distinctions are made, how can we be surprized that the populace at home or abroad should be irregular, even to very dangerous riots, and should disregard rules moral and civil, when they have such bad example from those that should lead to good? Let us remember their proportion of numbers is great, their spirits equal; and nothing but proper rules and proper dignity in their application, can maintain government: But, though warned by this important article, which hath made us digress perhaps too far, we must return to our proper subject.

If debts are contracted for evident good purposes, the same disposition in the possessor of the estate will agree, and easily obtain the concurrence of all concerned, for a temporary abridgment of expence to clear them. Suppose the half of neat rent, exclusive of house, gardens, and demesne for a reasonable term of years, even though his own

life don't see the issue. The successor having the like liberty, cannot justly complain; and might have profited from the purpose and course of the contraction. If the above should be deficient to discharge them, why not half the planting, especially his own and immediate predecessor's, under the regulations mentioned before, be appropriated to effect it?

As reasonable provisions to children are allowed, and creditors for good purposes are provided for, and such easy access to rents, and to know the extent of estate, and whether entailed; is there any reason to allow debts to be encreased by arrears of interest, even of Entailers debt; especially, as by the allowed eventual, gradual alienations, estates will soon come into commerce and change hands; though by some such regulation as suggested, they will transmit gradually, without private distress or publick injury. And in such situation, there do not appear to us any reason for the usual resolute irritant clauses, which often injure friendships, and sometimes the peace and union of the same family, and destroy the just subordination of children to parents. Or that the Entail should be vitiate or hurt by any neglects of the possessors, or perhaps blunders of conveyance in their making up titles to their predecessors.

Agreeable to our capital aim, mentioned in the beginning of the preceding article, we apprehend

there should be discouragement and punishment for riots and crimes of any sort, especially rebellion; but with the just distinction suggested in the case of contractions of debt, to punish the guilty only. Whether the late system and judgments for giving titles of honour, and entailed estates of persons forfeiting by rebellion, to lateral heirs, be legal or politic, is not fit for us to examine; but by this practice, Entails become more important than they were formerly thought, for preservation of families, and many innocents, from the fatal effects of folly; of enthusiasts, or ambitious, revengeful, turbulent or bankrupt persons. Nor should we by credits, somewhat needful for exertion of such follies, encourage them. When such irruptions unhappily occur, many simple and unwary are corrupted, and commerce and all improvements very sensibly suffer.—

Upon the supposition of some such regulations as above hinted, it do not appear to us very material, to limit the least or most that may be entailed.—All land, by the allowances proposed, and the nature of things, will gradually come to market, and we have now small, if any cause to fear; any return of the former fatal effects of the ancient barons, who, as the judicious Dr. Robertson expresses it, “neither feared the King nor pitied the people.” Their Strings in this country are happily plucked out, by the abrogation of heritable jurisdictions and personal service; and these indeed confirmed and strengthened by more liberal and happy sentiments of,

of, and disposition for liberty. It is at least the object of a wish, that such happy situation was not so much abused by licentious exercise of it, by faction and its tools. But it may not be imprudent to limit some rapacious insatiable earth-worms; some such grubs devour numbers of useful small proprietors, who might have improved what the purchaser, in his almost unbounded extent of land, cannot perform, if he was so disposed. And what is lamentable, the disposition for the one, and where most power to do good, private or publick, is not always accompanied with a disposition and abilities for it. The now customary respect paid to wealth, and our experienced weight and influence of it, in elections to Parliament, receptions and countenance of those in power, &c. in some instances, not always in just proportion to the merit of the possessors, render some bounds to its long continuance, in any moderate degree, rational. Whether this limitation should be proportioned to the rank in honours, we shall not here say, but in this particular, and the quantum of most and least, concur with the general bent of counties hitherto published, to leave it to the wisdom of parliament.

As to Entails already made, our respect to ancestors, and the just authority the fair acquirers of estates with reputation were entitled to, for establishing the limitations of their transmission, renders it difficult to determine, what opinion to suggest concerning them.—Virtue merits reward, and even needs encourage:

encouragements to perverse mortals. It is a delicate point. But, *Lex citius vult tolerare privatum damnum quam publicum malum. Lex est summa ratio. Potentior est dispositio legis quam hominis.* If all, or any of the reasons that shall be established, should be extended to them, we shall not presume to say; let that also go to the wisdom of parliament to determine.

In all we have offered to the superior judgment of others, our aim hath been to check vice and folly, the bane of public and private happiness and prosperity even in this stage of our existence; and that in a way, compatible with the true rational interests of all concerned, public or private; for in our unequalled happy constitution, they cannot be separated. In aiming at this, we apprehend, any partiality to particular articles or classes of persons, would destroy the proper complex system. We have therefore, throughout the whole, endeavoured to guard and promote the public interest and constitution, now safe and happy under our most amiable King and his illustrious family, as being essential to all: and in consequence, to preserve respectable families for some reasonable period; that all may not, in a confused, useless and perhaps hurtful fluctuation, rise and die like mushrooms or insects: but by preserving and nourishing the root, to make all the branches flourish and prosper. We have constantly suggested reasonable provision for wife or husband; and the same for children;

children; and what we humbly apprehend reasonable security for creditors, if not only useless but noxious;—with properties of interest and dependance, the best human securities; for childrens subordinations to parents, and their reciprocal amity and good offices, and the best chance for prosperity to each. We have not omitted checks to riot or rebellion; nor encouragements to commerce, industry and œconomy, and in all points, as far as presently occurred to us, and fell naturally in our way upon this occasion, we have added excitements by interest, and gratifying natural bents, for all to promote the interest, and increase the stock of the community, and to try to tempt some to operate in it, who might not otherwise think of or incline; for which, to all concerned, we have hinted the best measures we could think of. How far our humble suggestions tend to attain our aim, which is certainly good, others are more capable to determine. The best designs or institutions, as we have already noticed, may miss their aims, and perhaps be perverted for bad purposes; but that may be the fate of all plans: feeble and confined human prudence can only be cautious, in proportion to the importance and peculiar circumstances of the object; and intend well, with all possible checks against abuse. But whatever may be done, we have one great consolation, that it must be done in a British Parliament; and they are ignorant of, or much misrepresent our brethren in England, by whom it must be done or allowed; if it is pretended by any, that they either impose any thing

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materially hurtful, or obstruct any thing truly useful, if our countrymen are united, and are active. As this important affair may occasion meetings and consultations of our representatives, which are not so frequent as could be wished; and as the subject hath already gained the attention of many in England; we apprehend this to be a favourable opportunity for our members, and much tending to their honour and the gaining or preserving the esteem of the English, to obtain for us some other very material and needed reforms, more general and immediate in their use, though perhaps not so important in some respects: we shall therefore venture upon this occasion to hint at a few, we apprehend most immediately wanted.

One main professed object for the proposed reform of the Law of Entails hath been, to advance the improvement of the country. Can any man contribute more to this, than by repairing the roads already made, and by making others, where at present a wheel carriage cannot pass, which is the state of the greatest part of North Britain; and which discourages the people much to their hurt, from using them even about their farms, tho' of evident importance to their success in husbandry, and the improvements of land or commerce? The many turnpikes, where heavy tolls are paid, and many very expensive navigations now going forward, demonstrate the important light in which the easy conveyance of goods is viewed by those attentive to commerce. It is justly the object of ridicule to all strangers, who casually have opportunity to see it; and lamentably it is to be found

found in many countries, to see an able man leading a single horse, with a load on its back, which the driver might almost carry. A new road bill has been universally called for, and much thought and wrote upon, these several years: It is not easily accountable, why it hath been so long neglected. The disputes and different sentiments, whether a pound-rate, or antient statute-labour should be used, is no reasonable excuse; because both may be left to the choice of each county, and each will adopt and use what suits them best. The particular grievances and defects to be redressed, have been minutely canvassed in print and representations from counties; wherefore we will not here recite them. We shall only, to shew the necessity of redress without further delay, mention, that by the present law, nine-tenths of Scotland are deprived of three-fourths, and some of the whole of the statute-labour. The law requires only three days in summer, and these must by a clause in an act of King George the First, be exacted before the first of July; as devised by some worthy member, we had then the great honour to send to parliament; and shews our judgment and care in our choice of some of them: The other three days are to be after harvest. Now in counties whose fuel is peat or turff, which are by much the largest share of Scotland, the people cannot be brought to the road-work until their fuel is secured; which taking long time to dry after it is cut and laid out, engrosses all the time from finishing of the barley sowing till the first of July. This deprives them of the first three days. When called after the first of July for
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their statute-labour, some of them have complained to the court of session of its illegality, who punished the justices concerned severely. The people think it oppression to interrupt their fuel employ; and will run any risk of penalties, rather than be disappointed of it. The harvest is late in many counties, at least in some seasons; it was not finished last year in large tracts of country until November.——The weather at such season is but uncertain, and the work upon roads, except for drains or stones, doth then more hurt than good. Does not this need immediate reform? One half of the country do not give their statute-labour, even where the above obstructions do not occur. The gentry are defective in it, as well as commons. Should not all be effectually compelled to work or pay the reasonable equivalent? When roads are made, and bridges built, both are abused, and no effectual remedy by the law at present; carrion and other nuisances and obstructions are allowed to be upon them;—even useless, nay hurtful dogs disturb, and often injure travellers. The carrion they meet with being starved at home, in possession of very beggars, at least contribute to their madness, which is frequent, and hath very often fatal effects to people and cattle; of which there have been lately very melancholy accounts in both England and Scotland. We want money for the publick expences, and to help to discharge some of our enormous, heavy public debt; yet we tax trade, and leave such a monstrous nuisance on folly free from any censure or duty. But the dogs do
further

further damage, we mean the useless part of them; they destroy many of our sheep and lambs, upon which our staple manufactures of wool, the true silver and gold mines of Britain, do much depend. Few parts of our country will allow of any extensive navigations through it, therefore roads are more necessary; but the neglect of communications by water betwixt the east and west seas from the Forth to Clyde, and from Inverness to Fort William, either at public or private cost, is both lamentable and shameful. Several others might with small expence be rendered more compleat upon some rivers, especially the many fine inlets of the sea on both east and west sides of the island, peculiarly so in some of the annexed estates. These amongst other good effects, might be essential to improve our fishings; valuable if attended to, for riches and seamen, and give access to woods, that at least might be extensive upon sides of such inlets, and of great importance to a nation whose natural and chief power is in her navy. Besides the many valuable mineral appearances, well known to be in the hills, &c. or adjoining to such inlets; all which are really worthy objects for the publick attention, and our representatives would be worthily employed to make proper representations concerning them.

We have said in the preceding paragraph, that great part of the country depends upon peat and turf for fuel; without which, neither husbandry nor manufactures can proceed; for the improvement whereof so much hath been said, and this reform of

Entails hath been principally intended. For the same purpose the preservation and increase of woods and planting hath been anxiously aimed at. Is it not then preposterous, that we should lose one hour to rectify a daily gross abuse that doth destroy much, nay may destroy all, of both peat and woods; by the shameful burning of moor or heath. Hinds carry their fires many miles; when it gets into woods or peat land, all the people of the country cannot extinguish it. The immense danger from it, hath been frequent and notorious. By our law at present, the transgressor cannot be detected. Surely some method might be devised to amend this, and it evidently merits immediate attention; something like the British statute about green wood might do, but to have a limited small penalty. We shall not at present enter into the dispute, whether moor burn be necessary or useful; but surely it needs regulation, and easy, certain means for execution.

There is another article of immediate effect and great importance to all the improvements we have been aiming at, viz. an uniformity of weights and measures; and that all grain should be sold by weight, the only true test of its quality, and best means to induce farmers to study it. This is the usual method of purchasing from, or selling to foreigners. The distraction, and even impositions on many, especially the poor farmers, whose guardians we ought to be, are well known, and shameful to continue so long, especially in a mercantile

mercantile country. The difficulties and objections are already surmounted, and all proper regulations were prepared, by an ingenious worthy person of the committee of the house of commons upon that subject some years ago. Is it a just excuse for our members, that our brethren in the South are equally concerned? Should they be ashamed to prompt, nay even, if needful, to lead in what is evidently good? We have successfully and creditably done so in some things.

But what availeth all the above mentioned subjects and much more, though attained and accomplished to our highest wish, if all and every thing truly valuable is rendered precarious by the very possibility of a majority in parliament, which even our few members may possibly occasion, as not having so much as the weak *tie of a small property of their own*, to run the hazard of the rest. We have mentioned the danger of indigence in persons of rank; it is the same whether the rank arises from titles, connections, or stations. It appears to us ridiculous to common sense, a solecism in policy, and must render us contemptible to our neighbours and all the world, that such majority may be made to determine this important article for the settlement and transmission of Land; of persons who may not have one inch of land, nor any profits from it, not even the value of one sixpence in any way.—Should not all possible means be used to guard against such possible great evil?—The city of London, though great and respectable, is so but in a small proportion, compared with the whole

whole British empire, highly concerned in this point; yet they think a qualification of clear property to the members of their common council, essential for the security of their limited government and local concerns. Our brethren in the South have done so in respect to parliament. Are we so much wiser than they, that we should neglect it? Let us forthwith have a reasonable qualification for all our members. We cannot expect the just ancholation of nominal qualifications of voters in elections, as many purchasers of them would complain, though its absurd consequence is evident, that nominal voters may out-number all of real property, though united: and these, as being in the power of the peers only, destroy the division and equilibrium of power, which is the beauty and security of our constitution.

This humble remonstrance might have been much shorter, and more studied in language and many respects, had it been begun sooner; or we had thought there was time for proper revival: but as its intention is good, we hope that will atone for its faults in composition, and obtain the candid allowances of all who may bestow a perusal on it.

F I N I S.